IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE EIGHTEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No.1687 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 01/10/2004 in WP NO : 8204 OF 2004 on the file of the High Court.)

Between:

1.Mohd. Khalid Ahmed, S/o. Mohd. Ahmed,
2.Mohd. Mahaboob Ahmed, S/o. Mohd. Khalid Ahmed,
3.Mohd. Maqbool Ahmed, S/o. Mohd. Ahmed,
4.Mohd. Rafiq Ahmed S/o. Mohd. Ahmed,
5.Mohd. Naseer Ahmed, S/o. Mohd. Ahmed,
6.Mohd. Basheer Ahmed, S/o. Mohd. Ahmed,
All are R/o. 20-4-209/1/3/7, Khilwath, Near Charminar, Hyderabad.

..... APPELLANTS

AND

The Mandal Revenue Officer, Bahadurpura, Hyderabad.

.....RESPONDENT

Counsel for the Appellant: Mr.C.V.MOHAN REDDY

Counsel for the Respondent : G.P. FOR REVENUE

The Court at the admission stage made the following :

ORAL JUDGMENT: (per the Hon'ble the Chief Justice)

The judgment of the learned single Judge disposing of the writ petition with liberty reserved to the petitioners-appellants to submit their explanation to the show cause notice, is under challenge in the appeal. The principal grievance of the learned counsel for the petitioners-appellants is that notice issued under Section 7 of the A.P. Land Encroachment Act (Act No.3 of 1905) is not the remedy, which can be availed of by the respondent in view of the possession of the petitioners-appellants. It has been the case of the petitioners-appellants that they had been in occupation of the land. They claimed that one Hamidunnisa Begum, wife of Iqbaluddin, purchased 363.49 Sq.mtrs. of land surrounded by compound wall bearing Municipal Nos.21-2-292 and 29-2-293 in the Court auction held in the year 1960, who in turn sold this property to Smt.Kamalamma under a registered sale deed on 1st March 1966 vide registered document bearing No.248/1966 and on the death of Smt. Kamalamma, her sons inherited the property and that C.Prakash Rao representing the joint family leased the property to third petitioner on 1-12-1994, and when the lessors, without taking due recourse to law, tried to evict third petitioner, he filed O.S.No.463 of 2002, in which I.A.No.314 of 2002 was also filed for injunction. The petitioners alleged that when the lessors of third petitioner having failed to get order of eviction of the petitioners from the property, they agreed to sell the property. Reference is made to the petitioners' earlier W.P.No.14441 of 2002, and also the decision of the Supreme Court, in which there was direction to the respondents not to interfere with the petitioners' possession and enjoyment without initiating appropriate proceedings in accordance with law. It was specifically observed that in case the petitioners' possession is not valid, the only course open to the respondents will be, in view of the decision of the Supreme Court in **Govt. of A.P. v. T.Krishna Rao,** to file civil suit. Alternatively, proceedings under the A.P. Land Encroachment Act can also be initiated.

Possession of the petitioners' predecessors-in-title was recorded in town survey conducted in 1968. As per the record, the petitioners filed copies of the sale deed etc. being the documents of title. In view of the possession of the petitioners, without taking out appropriate proceedings, notice under the A.P. Land Encroachment Act, deserves to be set aside with liberty reserved to the respondent to take out appropriate proceedings in accordance with law. The notice impugned in the writ petition is set aside. Order of the learned single Judge is set aside and

W.P.No.8204 of 2004 is allowed.

Writ appeal stands allowed accordingly.

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(DEVINDER GUPTA, C.J.)

18th November 2004.

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(C.V.RAMULU, J.)

ARS

To

1. The Mandal Revenue Officer, Bhadurapura, Hyderabad.

2. Two CCs to Govt. Pleader for Revenue, High Court Bldgs.,

Hyderabad (OUT).

3. Two CD copies.